In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 56

UNITED STATES OF AMERICA AND FEDERAL COMMUNICATIONS COMMISSION, PETITIONERS

v.

WILSON & CO., INC., SWIFT & COMPANY, ARMOUR AND COMPANY, AMERICAN TELEPHONE AND TELEGRAPH COMPANY AND BELL SYSTEM ASSOCIATED COMPANIES

JOINT MOTION TO REMAND TO THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT FOR ENTRY OF A DECREE OF RESTITUTION

The petition for certiorari in this case, which this Court granted on March 29, 1965 (380 U.S. 950), stated the question presented in the following terms (p. 2):

> The Federal Communications Commission entered orders revising common carrier rates for private-line telegraph service and private-line telephone service, the general effect of which was to raise telegraph rates and to lower telephone rates. Only the higher telegraph rates were challenged in the review proceeding brought by the respondent meatpacking concerns. On the meatpackers' motion to stay the telegraph increases, the court below, accepting

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the proposal of American Telephone and Telegraph Company (an intervenor), stayed, *pendente lite*, the whole of the Commission's orders, including the lowered telephone rates, and declined to condition the stay so as to protect telephone customers who might be adversely affected. In its final decision, the court of appeals affirmed the Commission's orders in all respects. Despite the government's request, the court terminated the proceeding without considering or providing restitution to those customers who were deprived, during the pendency of the appeal, of the lower telephone rates ordered by the Commission.

The question presented is whether the court of appeals had a duty in equity, once it had sustained the Commission's rate orders on the merits, to require the carrier to return to its private-line telephone customers the excess rates it had collected, under the stay *pendente lite*, during the pendency of the appeal.

Petitioners and respondents American Telephone and Telegraph Company and Bell System Associated Companies[1] have agreed that the court of appeals should enter a decree of restitution for the benefit of the private-line telephone customers whose rates for

[1] Respondents Wilson & Co., Inc., Swift & Company and Armour and Company, petitioners for review in the court below, are only nominal parties in this Court and have stated that they have no interest in the question presented by the petition for certiorari granted in this case. Counsel for these respondents, Miss Sharon King, has been apprised of the fact that agreement has been reached between petitioners and respondent telephone companies and has advised the Solicitor General that respondent meatpacking companies have no objection to the entry of an order of remand.

that service were reduced by the Federal Communications Commission's orders involved here but from whom respondent telephone companies—as a result of the court of appeals' stay—collected greater revenues between August 1, 1963, and September 30, 1964, than they would have collected had the above-mentioned Commission orders become effective on August 1, 1963. These parties have also agreed on a specific decree of restitution (a copy of which is attached as an Appendix to this motion) which they believe to be equitable and desire to submit for entry by the court of appeals.

Therefore, petitioners and respondents American Telephone and Telegraph Company and Bell System Associated Companies hereby jointly move this Court to remand the cause to the Court of Appeals for the Seventh Circuit in order to permit entry of a decree of restitution in accordance with the agreement of these parties.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

HOWARD J. TRIENENS,
Counsel for Respondents American Telephone and Telegraph Company and Bell System Associated Companies.

JANUARY 1966.

APPENDIX

In the United States Court of Appeals for the Seventh Circuit

No. 14269

WILSON & CO., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA AND FEDERAL COMMUNICATIONS COMMISSION, RESPONDENTS

On Petition To Review Orders of the Federal Communications Commission

DECREE OF RESTITUTION

THIS CAUSE having been remanded to this Court for the purpose of entering a decree of restitution;

IT IS HEREBY ORDERED that, within 180 days of the date of this Decree, respondents American Telephone & Telegraph Company and Associated Bell System Companies make restitution payments to its customers using private-line telephone services, computed as follows: (1) determine for each customer of private-line telephone service whose charges were decreased as a result of the orders of the Federal Communications Commission, the difference between the contract revenue value of September 1964 service as billed and the contract value of said service priced at October 1964 rates; (2) determine the total of decreases calculated in the foregoing step (1); (3) similarly determine and subtract from said total the total of dif-

ferences in telephone contract revenue for customers whose telephone charges increased, and divide the difference so obtained by the total of decreases determined in the foregoing step (2); (4) apply the ratio calculated in the foregoing step (3) to the decrease determined for each customer in the foregoing step (1) and determine the percentage that the adjusted difference is of the September 1964 contract value; (5) apply the percentage determined in the foregoing step (4) to the contract value of private-line telephone service as billed for each of the months August 1963 through September 1964; (6) for customers of both telephone and telegraph service whose charges for telegraph service were increased as a result of the orders of the Federal Communications Commission, calculate each customer's September–October telegraph increase as a percentage of the September 1964 telegraph contract value; (7) apply said percentage to the contract value of telegraph service for each of the months August 1963 through September 1964, to determine the telegraph offsets; (8) subtract the amounts computed in the foregoing step (7) from the adjusted monthly telephone decreases computed in the foregoing step (5); (9) for any month in which differences in contract values employed in the foregoing steps (5) and (7) indicate that the September 1964 base may not be representative, review the composition of the customer's service and, if the adjustment percentage calculated for September 1964 is found not to be representative, calculate a new percentage, using that month as a base, and apply the new percentage to that and other months for which it is representative (such a review will be made whenever a month's contract value of a customer's service differs from the base month contract value by more than 10%); (10) for any customers who received private-line telephone service during a part of the period

August 1963–September 1964 who did not receive service in September 1964, calculate restitution generally as outlined in the foregoing steps using the last month of service as a base.

Dated this —— day of ————, 1966.

U.S. GOVERNMENT PRINTING OFFICE: 1966